



Eden Environmental Citizen's Group

July 31, 2019

Via US Mail, Certified

USPS Tracking No. 9407 1118 9956 1432 4006 66

Kristina Feng
Transene Company, Inc.
1127 57th Avenue
Oakland, CA 95621

Via US Mail

Christopher Christuk
Transene Company, Inc
63 Sunset Drive
Newbury, MA 01951

Kristina Feng
Agent for service
Transene Company, Inc.
1410 Rocklin Court
San Jose, CA 95131

Re: FIRST SUPPLEMENTAL 60-Day Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act ("Clean Water Act")

To Officers, Directors, Operators, Property Owners and/or Facility Managers of Transene Company, Inc., formerly known as Shape Products:

This letter is being sent to you on behalf of Eden Environmental Citizen's Group, LLC ("EDEN") to give legal notice that EDEN intends to file a civil action against Transene Company, Inc., formerly known as and doing business as Shape Products; as well as its Facility Manager Kristina Feng ("Discharger") for violations of the Federal Clean Water Act ("CWA" or "Act") 33 U.S.C. § 1251 *et seq.*, that EDEN believes are occurring at the Transene/Shape Products facility located at 1127 57th Avenue in Oakland, California ("the Facility" or "the site").

This letter supplements EDEN's initial Notice Letter sent to the Facility on March 4, 2019.

2151 Salvio Street #A2-319
Telephone: 925-732-0960



Concord, CA 94520
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Website: edenenvironmental.org

EDEN is an environmental citizen's group established under the laws of the State of California to protect, enhance, and assist in the restoration of all rivers, creeks, streams, wetlands, vernal pools, and tributaries of California, for the benefit of its ecosystems and communities.

EDEN formally registered as a limited liability company (LLC) association with the California Secretary of State on June 22, 2018; however, since at least July 1, 2014, EDEN has existed as an unincorporated environmental citizen's association with members who remain associated with EDEN as of the date of this Notice.

As discussed below, the Facility's discharges of pollutants degrade water quality and harm aquatic life in the Facility's Receiving Waters, which are waters of the United States and described in Section II.B, below. EDEN has members throughout California. Some of EDEN's members live, work, and/or recreate near the Receiving Waters and use and enjoy the Receiving Waters for surfing, kayaking, camping, fishing, boating, swimming, hiking, cycling, bird watching, picnicking, viewing wildlife, and/or engaging in scientific study.

At least one of EDEN's current members has standing to bring suit against Transene/Shape Products, as the unlawful discharge of pollutants from the Facility as alleged herein has had an adverse effect particular to him or her and has resulted in actual harm to the specific EDEN member(s).

Further, the Facility's discharges of polluted storm water and non-storm water are ongoing and continuous. As a result, the interests of certain individual EDEN members have been, are being, and will continue to be adversely affected by the failure of Transene/Shape Products to comply with the General Permit and the Clean Water Act.

CWA section 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA section 505(a), a citizen must give notice of intent to file suit. 33 U.S.C. § 1365(b). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA"), and the State in which the violations occur.

As required by CWA section 505(b), this Notice of Violation and Intent to File Suit provides notice to the Discharger of the violations which have occurred and continue to occur at the Facility. After the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, EDEN intends to file suit in federal court against the Discharger under CWA section 505(a) for the violations described more fully below.

I. THE SPECIFIC STANDARD, LIMITATION, OR ORDER VIOLATED

EDEN's investigation of the Facility has uncovered significant, ongoing, and continuous violations of the CWA and the General Industrial Storm Water Permit issued by the State of California (NPDES General Permit No. CAS000001 [State Water Resources Control Board ("SWRCB")]) Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ

(“1997 Permit”) and by Order No. 2014-0057-DWQ (“2015 Permit”) (collectively, the “General Permit”).

Information available to EDEN, including documents obtained from California EPA’s online Storm Water Multiple Application and Reporting Tracking System (“SMARTS”), indicates that on or around November 7, 1992, Transene/Shape Products initially submitted a Notice of Intent (“NOI”) to be authorized to discharge storm water from the Facility. On or around January 22, 2015, Transene/Shape Products submitted an NOI to be authorized to discharge storm water from the Facility under the 2015 Permit and was assigned Waste Discharger Identification number (“WDID”) is 2 01I009108.

On May 3, 2019, Transene/Shape Products submitted through SMARTS an application to the State Water Board for No Exposure Certification (“NEC”) and received an automatically generated NEC ID Number of 2 01NEC005117.

As more fully described in Section III, below, EDEN alleges that in its operations of the Facility, the Discharger has committed ongoing violations of the substantive and procedural requirements of the Federal Clean Water Act, California Water Code §13377; the General Permit, the Regional Water Board Basin Plan, the California Toxics Rule (CTR) 40 C.F.R. § 131.38, and California Code of Regulations, Title 22, § 64431.

II. THE LOCATION OF THE ALLEGED VIOLATIONS

A. The Facility

The location of the point sources from which the pollutants identified in this Notice are discharged in violation of the CWA is Transene/Shape Products’ permanent facility address of 1127 57th Avenue in Oakland, California.

Transene/Shape Products manufactures chemical formations for the electronics industry, including wet chemical etchants for metals and dielectrics, photoresists and photoresist ancillary chemicals, electroless and electrolytic plating solutions, conductive and insulative epoxies, silicones, photomask chemicals, encapsulants, and cleaning chemicals.

Facility Operations are covered under Standard Industrial Classification Code (SIC) 2819 – Industrial Inorganic Chemicals, NEC.

EDEN’s investigation reveals that large amounts of toxic heavy metals are used by the Facility in its daily operations, such as Aluminum, Chromium, Copper, Iron, Nickel, Silver and Zinc.

Based on EPA's Industrial Storm water Fact Sheet for Sector C – Chemicals, including Agricultural Chemicals, polluted discharges from chemical manufacturing facilities such as the Facility contain pH affecting substances; heavy metals, such as iron and aluminum; total suspended solids ("TSS"); benzene; gasoline and diesel fuels; fuel additives; coolants; and oil and grease ("O&G"). Many of these pollutants are on the list of chemicals published by the State of California as known to cause cancer, birth defects, and/or developmental or reproductive harm.

B. The Affected Receiving Waters

The Facility discharges into the San Leandro Bay, which is connected to the San Francisco Bay ("Receiving Waters").

The San Francisco Bay is a water of the United States. The CWA requires that water bodies such as the San Francisco Bay meet water quality objectives that protect specific "beneficial uses." The Regional Water Board has issued the San Francisco Bay *Basin Water Quality Control Plan* ("Basin Plan") to delineate those water quality objectives.

The Basin Plan identifies the "Beneficial Uses" of water bodies in the region. The Beneficial Uses for the Receiving Waters downstream of the Facility include: commercial and sport fishing, estuarine habitat, fish migration, navigation, preservation of rare and endangered species, water contact and noncontact recreation, shellfish harvesting, fish spawning, and wildlife habitat. Contaminated storm water from the Facility adversely affects the water quality of the San Francisco Bay watershed and threatens the beneficial uses and ecosystem of this watershed.

Furthermore, the San Francisco Bay is listed for water quality impairment on the most recent 303(d)-list for the following: chlordane; dichlorodiphenyltrichloroethane (DDT); dieldrin; dioxin compounds (including 2,3,7,8- tetrachlorodibenzo-pdioxin); furan compounds; invasive species; mercury; polychlorinated biphenyls (PCBs); PCBs (dioxin-like); selenium, and trash.

Polluted storm water and non-storm water discharges from industrial facilities, such as the Facility, contribute to the further degradation of already impaired surface waters, and harm aquatic dependent wildlife.

III. VIOLATIONS OF THE CLEAN WATER ACT AND GENERAL PERMIT

A. Deficient SWPPP and Site Map

From the date Transene/Shape first obtained General Permit coverage until April 29, 2019, the Facility failed to develop a SWPPP, and its Site Map was simply an evacuation plan.

On May 3, 2019, Transene/Shape finally uploaded a SWPPP and Site Map to SMARTS.

However, both the SWPPP and Site Map continue to be deficient for the following reasons.

- (a) The Site Map does not include the minimum required components for Site Maps as indicated in Section X.E of the General Permit. Specifically, the Site Map fails to include the following:
 - 1) All locations where materials are directly exposed to precipitation; and
 - 2) All areas of industrial activity subject to the General Permit.
- (b) The SWPPP fails to correctly document the facility's **scheduled operating hours**, including irregular operating hours (i.e. temporary, intermittent, seasonal, weather dependent) (Section X.D.2.d);
- (c) The SWPPP fails to include an appropriate and accurate discussion of all **Industrial Materials** handled at the facility, including the locations where the materials are stored, received, shipped and handled, and the quantities and handling frequency of the Industrial Materials (Sections X.A.3, X.F, X.G.1.a);
- (d) The SWPPP fails to discuss in detail **ALL Facility operations and ALL industrial processes** at the facility, including manufacturing, cleaning, maintenance, recycling, disposal, and any other activities related to each industrial process; and the type, characteristics, and approximate quantity of industrial materials used in or resulting from the process. Areas protected by containment structures and the corresponding containment capacity are also required to be identified and described. (X.G.1.a);
- (e) The SWPPP fails to include an accurate and complete description of **Potential Pollutant Sources** and narrative assessment of all areas of industrial activity with potential industrial pollutant sources, including Industrial Processes, Material Handling and Storage Areas, Dust and Particulate Generating Activities, Significant Spills and Leaks, Non-Storm Water Discharges and Erodible Surfaces (Section X.G);
- (f) The SWPPP fails to identify all **Non-Storm Water Discharges (NSWDs)** sources and drainage areas, including an evaluation of all drains (inlets and outlets) that identifies connections to the storm water conveyance system, and a description of how all unauthorized NSWDs have been eliminated (Section X.G.e);
- (g) The SWPPP does not contain the proper **sampling parameters** for the Facility's correct SIC Code of 2819 (Section XI.B.6.d, Table 1, Section XI)); and

- (h) The SWPPP does not contain the proper **sampling parameters** that include all potential pollutants present at the facility due to its industrial operations and industrial materials present at the facility (Section XI.B.6).

Failure to develop or implement an adequate SWPPP and/or Site Map is a violation of Sections II.B.4.f and X of the General Permit.

B. Failure to Develop, Implement and/or Revise an Adequate Monitoring and Reporting Program Pursuant to the General Permit

Section XI of the General Permit requires Dischargers to develop and implement a storm water monitoring and reporting program ("M&RP") prior to conducting industrial activities. Dischargers have an ongoing obligation to revise the M&RP as necessary to ensure compliance with the General Permit.

The objective of the M&RP is to detect and measure the concentrations of pollutants in a facility's discharge, and to ensure compliance with the General Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. An adequate M&RP ensures that BMPs are effectively reducing and/or eliminating pollutants at the Facility, and it must be evaluated and revised whenever appropriate to ensure compliance with the General Permit.

Failure to Collect and Analyze Storm Water Samples

EDEN alleges that the Discharger has failed to provide the Regional Water Board with the minimum number of annual documented results of facility run-off sampling as required under Sections XI.B.2 and XI.B.11.a of Order No. 2014-0057-DWQ, in violation of the General Permit and the CWA.

Section XI.B.2 of the General Permit requires that all Dischargers collect and analyze storm water samples from two Qualifying Storm Events ("QSEs") within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30).

Section XI.C.6.b provides that if samples are not collected pursuant to the General Permit, an explanation must be included in the Annual Report.

As of the date of this Notice, the Discharger has failed to upload into the SMARTS database system *any* storm water samples for the prior five-year period, including the reporting periods 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19 to date.

C. Falsification of Annual Reports Submitted to the Regional Water Board

Section XXI.L of the General Permit provides as follows:

L. Certification

Any person signing, certifying, and submitting documents under Section XXI.K above shall make the following certification:

"I certify under penalty of law that this document and all Attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, to the best of my knowledge and belief, the information submitted is, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Further, Section XXI.N of the General Permit provides as follows:

N. Penalties for Falsification of Reports

Clean Water Act section 309(c)(4) provides that any person that knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this General Permit, including reports of compliance or noncompliance shall upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than two years or by both.

On July 18, 2017 and June 26, 2018, Transene/Shape Products submitted its Annual Reports for the Fiscal Years 2016-17 and 2017-2018, respectively. These Reports were signed under penalty of law by Anthony Weiler. Mr. Weiler was the designated Legally Responsible Person ("LRP") for Transene/Shape Products until March 8, 2019.

Mr. Weiler responded "Yes" to Question No. 3 on both of the Annual Reports ("Did you sample the required number of Qualifying Storm Events during the reporting year for all discharge locations, in accordance with Section XI.B?") However, as discussed above, Transene/Shape Products failed to collect and analyze *any* storm water samples during either the 2016-17 or the 2017-18 reporting years.

D. Failure to File Annual Reports

Transene/Shape Products has failed to comply with Section XVI.A of the General Permit, which provides as follows: “The Discharger shall certify and submit via SMARTS an Annual Report no later than July 15th following each reporting year using the standardized format and checklists in SMARTS.”

Transene/Shape Products’ Annual Report for the reporting year 2015-16 was due on or before July 15, 2016. However, to date, the Facility has failed to file the Annual Report for reporting period 2015-16,

E. Deficient BMP Implementation

Sections I.C, V.A and X.C.1.b of the General Permit require Dischargers to identify and implement minimum and advanced Best Management Practices (“BMPs”) that comply with the Best Available Technology (“BAT”) and Best Conventional Pollutant Control Technology (“BCT”) requirements of the General Permit to reduce or prevent discharges of pollutants in their storm water discharge in a manner that reflects best industry practice, considering technological availability and economic practicability and achievability.

EDEN alleges that Transene/Shape Products has been conducting industrial activities at the site without adequate BMPs to prevent resulting non-storm water discharges. Non-storm water discharges resulting from these activities are not from sources that are listed among the authorized non-storm water discharges in the General Permit, and thus are always prohibited.

Transene/Shape Products’ failure to develop and/or implement adequate BMPs and pollution controls to meet BAT and BCT at the Facility violates and will continue to violate the CWA and the Industrial General Permit each day the Facility discharges storm water without meeting BAT and BCT.

Specifically, although the Facility has had General Permit coverage since 1992, it did not develop and implement a SWPPP until April of 2019. Furthermore, the SWPPP it did develop on April 29, 2019, does not adequately account for the Facility’s processing of wastewater contaminated with toxic chemicals. EDEN is informed and believes that the Facility lacks proper BMPs for processing its contaminated wastewater and for storage of its used plastic containers. EDEN’s investigation has revealed that large quantities of the Facility’s used plastic containers are in fact stored outdoors on a regular basis, and that it disposes of toxic process and rinse waters in an unsafe manner that exposes the toxic process water to becoming commingled with the Facility’s Receiving Waters.

F. Discharges In Violation of the General Permit

Except as authorized by Special Conditions of the General Permit, Discharge Prohibition III(B) prohibits permittees from discharging materials other than storm water (non-storm water

discharges) either directly or indirectly to waters of the United States. Unauthorized non-storm water discharges must be either eliminated or permitted by a separate NPDES permit.

Information available to EDEN indicates that unauthorized non-storm water discharges occur at the Facility due to inadequate BMP development and/or implementation necessary to prevent these discharges.

EDEN alleges that the Discharger has discharged storm water containing excessive levels of pollutants from the Facility to its Receiving Waters during at least every significant local rain event over 0.1 inches in the last five (5) years.

Specifically, the Facility has not implemented an adequate SWPPP, nor does it have proper BMPs to cover all of its Industrial Materials and Industrial Operations. Transene/Shape's industrial operations include potential pollutants such as copper, nickel, tin, silver, zinc, iron and aluminum

EDEN hereby puts the Discharger on notice that each time the Facility discharges prohibited non-storm water in violation of Discharge Prohibition III.B of the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

G. Failure to Properly Train Employees/Facility Pollution Prevention Team

Section X.D.1 of the General Permit requires each Facility to establish a Pollution Prevention Team responsible for assisting with the implementation of the requirements of the General Permit. The Facility is also required to identify alternate team members to implement the SWPPP and conduct required monitoring when the regularly assigned Pollution Prevention Team members are temporarily unavailable (due to vacation, illness, out of town business, or other absences).

Section X.H.f of the General Permit also requires that each Facility ensure that all Pollution Prevention Team members implementing the various compliance activities of the General Permit are properly trained in at least the following minimum requirements: BMP implementation, BMP effectiveness evaluations, visual observations, and monitoring activities. Further, if a Facility enters Level 1 status, appropriate team members must be trained by a QISP.

Based on the foregoing violations, it is clear that Transene/Shape Products has either not properly established its Pollution Prevention Team, or has not adequately trained its Pollution Prevention Team, in violation of Sections X.D.1 and X.H.f of the General Permit.

H. Fraudulent Application for NEC Coverage

Section XVII of the General Permit provides for No Exposure Certification Coverage (“NEC”), which is a Conditional Exclusion to Dischargers who are able to certify that their facility has no exposure of industrial activities or materials to rain, snow, snowmelt and/or runoff; and that all unauthorized non storm water discharges (NSWDs”) have been eliminated and all authorized NSWDs meet the conditions of Section IV of the General Permit. If a Facility qualifies for NEC coverage, after submission of specific Permit Registration Documents to the Water Board and payment of the appropriate fees, the Facility is excluded from compliance with Section X (Developing and Implementing a SWPPP) or Section XI (Monitoring) of the General Permit.

In order to qualify for NEC coverage, all Industrial Materials and Industrial Activities at a facility must be protected by a Storm-Resistant Shelter-- completely roofed and walled buildings or structures. Further, the facility must be inspected and evaluated annually to determine that storm water exposed to industrial materials or equipment has not and will not be discharged to waters of the United States. Evaluation records must maintained by the Facility for five years.

If that criteria applies, then the Facility is required to submit to SMARTS a completed NEC Application Form and Checklist, which includes the following, as well as a Site Map consistent with Section X.E of the General Permit which verifies that there is no exposure of industrial activities or materials to storm water at the site:

1. An NEC Checklist prepared by the Discharger demonstrating that the facility has been evaluated; and that none of the following industrial materials or activities are, or will be in the foreseeable future, exposed to precipitation:
 - a. Using, storing or cleaning industrial machinery or equipment, and areas where residuals from using, storing or cleaning industrial machinery or equipment remain and are exposed;
 - b. Materials or residuals on the ground or in storm water inlets from spills/leaks;
 - c. Materials or products from past industrial activity;
 - d. Material handling equipment (except adequately maintained vehicles);
 - e. Materials or products during loading/unloading or transporting activities;
 - f. Materials or products stored outdoors (except final products intended for outside use, e.g., new cars, where exposure to storm water does not result in the discharge of pollutants);
 - g. Materials contained in open, deteriorated or leaking storage drums, barrels, tanks, and similar containers;
 - h. Materials or products handled/stored on roads or railways owned or maintained by the Discharger;
 - i. Waste material (except waste in covered, non-leaking containers, e.g., dumpsters);

- j. Application or disposal of processed wastewater (unless already covered by an NPDES permit); and,
- k. Particulate matter or visible deposits of residuals from roof stacks/vents evident in the storm water outflow.

2. Signature certifying the following:

*I certify **under penalty of law** that I have read and understand the eligibility requirements for claiming a condition of 'no exposure' and obtaining an exclusion from NPDES storm water permitting; and that there are no discharges of storm water contaminated by exposure to industrial activities or materials from the industrial facility identified in this document (except as allowed in subsection C above). I understand that I am obligated to submit a no exposure certification form annually to the State Water Board and, if requested, to the operator of the local Municipal Separate Storm Sewer System (MS4) into which this facility discharges (where applicable). I understand that I must allow the Water Board staff, or MS4 operator where the discharge is into the local MS4, to perform inspections to confirm the condition of no exposure and to make such inspection reports publicly available upon request. I understand that I must obtain coverage under an NPDES permit prior to any point source discharge of storm water from the facility. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly involved in gathering the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

Once the proper permit registration documents have been submitted and the requisite fees paid, the SMARTS database system **automatically approves the Facility for NEC coverage**. It is important to note that the Facility's NEC registration documents are not reviewed by Water Board staff and that a Facility is not technically "approved" for NEC coverage unless and until the Regional Water Board conducts an inspection of the Facility to verify that it qualifies for NEC coverage.

If circumstances change after a Facility applies for NEC coverage, or if a Facility does not in fact qualify for NEC coverage when it registers on-line for same, the Discharger is subject to enforcement action for discharging without a permit. (See Section XVII.E.2)

Further, the Regional Water Board may subsequently deny NEC coverage and require standard NOI coverage upon determining that storm water is exposed to Industrial Materials and Activities at the site, and/or the Facility's discharge has a reasonable potential to cause or contribute to an exceedance of an applicable water quality standard. (See Section XVII.E.3)

On May 3, 2019, Transene/Shape Products submitted a SWPPP to SMARTS which included a Site Map. This SWPPP and Site Map, which were prepared after an environmental professional (Albion Partners) evaluated the Facility, confirmed that the Facility did not qualify for NEC Coverage. If in fact the professional site evaluation had confirmed that the Facility did qualify for NEC coverage, it would not have been necessary for the Facility to have prepared and uploaded a SWPPP, pursuant to Section XVII of the General Permit. Furthermore, EDEN's independent investigation has also verified that the Facility does not qualify for NEC coverage.

However, also on May 3, 2019, Kristina Feng, the Facility's Manager, submitted an application for NEC coverage to SMARTS which was automatically accepted without either a review by Water Board staff or a subsequent site inspection by the Regional Water Board.

Ms. Feng's certification and submission of the NEC application to the State Water Board was false and fraudulent for the reasons stated above. Specifically, at the time that Ms. Feng certified and submitted the application for NEC coverage for Transene/Shape Products, some of the facility's Industrial Materials and Industrial Operations were exposed to the elements and not protected by a Storm Resistant Shelter. Furthermore, EDEN contends that Ms. Feng's fraudulent statements made under penalty of perjury in the state of California, to register the Facility improperly for NEC coverage, were made for the sole purpose of attempting to avoid liability for its CWA and General Permit violations.

Transene/Shape Products may have had other violations that can only be fully identified and documented once discovery and investigation have been completed. Hence, to the extent possible, EDEN includes such violations in this Notice and reserves the right to amend this Notice, if necessary, to include such further violations in future legal proceedings.

IV. THE PERSON OR PERSONS RESPONSIBLE FOR THE VIOLATIONS

The entities responsible for the alleged violations are Transene Company, Inc., fka Shape Products, as well as employees of the Facility responsible for compliance with the CWA.

V. THE DATE, DATES, OR REASONABLE RANGE OF DATES OF THE VIOLATIONS

The range of dates covered by this 60-day Notice is from at least July 1, 2014, to the date of this Notice. EDEN may from time to time update this Notice to include all violations which

may occur after the range of dates covered by this Notice. Some of the violations are continuous in nature; therefore, each day constitutes a violation.

VI. CONTACT INFORMATION

The entity giving this 60-day Notice is Eden Environmental Citizen's Group ("EDEN").

Aiden Sanchez
EDEN ENVIRONMENTAL CITIZEN'S GROUP
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Concord, CA 94520
Telephone: (925) 732-0960
Email: Edenenvcitizens@gmail.com (emailed correspondence is preferred)
Website: edenenvironmental.org

EDEN has retained counsel in this matter as follows:

CRAIG A. BRANDT
Attorney at Law
5354 James Avenue
Oakland CA, 94618
Telephone: (510) 601-1309
Email: craigabrandt@att.net

To ensure proper response to this Notice, all communications should be addressed to EDEN's legal counsel, Mr. Craig A. Brandt.

VII. RELIEF SOUGHT FOR VIOLATIONS OF THE CLEAN WATER ACT

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5).

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five (5) years prior to the date of the Notice Letter. **These provisions of law authorize civil penalties of \$37,500.00 per day per violation for all Clean Water Act violations after January 12, 2009, and \$51,570.00 per day per violation for violations that occurred after November 2, 2015.**

In addition to civil penalties, EDEN will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law.

Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d) and California Code of Civil Procedure §1021.5, EDEN will seek to recover its pre and post-litigation costs, including all attorneys' and experts' fees and costs incurred (see *Southern California Alliance of Publicly Owned Treatment Works v. U.S. Environmental Protection Agency* (9th Cir. 2017) 853 F.3d 1076; *Vasquez v. State of California* (2008) 45 Cal.4th 243).

Specifically, in this case, Transene/Shape Products was in violation of almost every provision of the General Permit when it received EDEN's initial Notice Letter, dated March 4, 2019. The public record shows that the Facility attempted to come into compliance with the General Permit only after receiving EDEN's Notice Letter, when it had been out of compliance for many years, subjecting Transene/Shape Products to the obligation to repay EDEN for all of its legal and technical fees and costs incurred in bringing this action against the Discharger.

IV. CONCLUSION

The CWA specifically provides a 60-day notice period to promote resolution of disputes. EDEN encourages Transene/Shape Products's counsel to contact **EDEN's counsel** within 20 days of receipt of this Notice to initiate a discussion regarding the violations detailed herein. Please do not contact EDEN directly.

During the 60-day notice period, EDEN is willing to discuss effective remedies for the violations; however, if Transene/Shape Products wishes to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. EDEN reserves the right to file a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Aiden Sanchez', with a stylized, looping flourish.

AIDEN SANCHEZ
Eden Environmental Citizen's Group

Copies to:

Andrew Wheeler: wheeler.andrew@Epa.gov

Administrator, U.S. Environmental Protection Agency

State Water Resources Control Board

Eileen Sobeck, Executive Director

eileen.sobeck@waterboards.ca.gov

Mayumi Okamoto, Office of Enforcement: Mayumi.Okamoto@waterboards.ca.gov
stormwater@waterboards.ca.gov

Regional Administrator, U.S. EPA – Region 9

Jennifer Pierce: pierce.jennifer@epa.gov

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